IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICAATION NO.6632 OF 2005
IN
CRIMINAL APPEAL NO.613 OF 2005

Basappa Jaygonda Basargi ...Applicant/
Orig.Accused No.6
Vs.
The State of Maharashtra ...Respondent

Mr.Neetin Pradhan with Ms. S.D.Khot with Ms. Kuttikrishna & Mr.M. Pradhan for Applicant
Mrs. A.S. Pai A.P.P. for the State

CORAM: B.H.MARLAPALLE & ROSHAN DALVI, JJ.
DATED: 12TH JANUARY, 2006

P.C.

1. This is an application for bail by Accused No.6 who has been convicted by the learned IVth Additional Sessions Judge at Sangli in Sessions Case No.107 of 2004 for offences punishable under Sections 143, 147, 149, 342, 436, 302 and 427 of Indian Penal Code r.w. 427 r.w. 149 of Indian Penal Code. Criminal Appeal No.613 of 2005 against the said order of conviction and sentence has been admitted by this Court on 8th July 2005.

2. As per the prosecution case a mob of about 45 members of 2 families i.e. Birazdar and Basargi of village Asangi-Turk attacked the family members of deceased Mahadev Chavan on 21st March, 2004 at about 4.00 p.m. and thereafter the said members of Chavan

family were locked in their house and set on fire in which Mahadev Chavan, his wife Fulabai, son Appasaheb @ Machinder, married daughter Mrs.. Bharata Pandurang Sawant and her daughter Pranjali were killed. It was also the prosecution case that the members of unlawful assembly were armed with sticks and axes and other weapons. The learned Additional Sessions Judge relied upon the evidence of 3 eye witnesses namely P.W.-3 Irappa Kamble, P.W.-4 Manohar Hake, P.W.-17 Jagannath Chavan. The learned Additional Sessions Judge also relied upon the testimony of P.W.-18 Sidraya Ramgonda Medidar so as to corroborate the testimony of P.W.17 Jagannath chavan, the son of the deceased Mahadev Chavan and by relying upon mainly the decision of the Apex Court in the case of Masalti and others Vs. State of U.P. (AIR 1965 S.C. 202) convicted accused Nos.1 to 4, 6,7, 9 to 14, 16 to 18, 20, 23 to 25, 28, 29, 34, 36, 37 and 41 whereas the remaining accused came to be acquitted.

3. Mr. Pradhan the learned Counsel for the Applicant has taken us through the depositions of all these 4 witnesses namely P.W.3,P.W.4, P.W.17 and P.W.18. P.W.3 Irappa was the complainant and he stated that accused no.6 was one of the members of the unlawful assembly, he had seen in front of the house of the deceased Mahadev Chavan at the time and on the date of the incident, though he could not attribute any specific role to the participation of the

Applicant/Accused no.6. However, the other 2 eye witnesses p.w.4 and p.w.17 have no where in their witnesses did not support the statement of p.w.3 that the accused no.6 was a member of the unlawful assembly that committed the crime in which 5 persons lost their lives. P.W.17, as noted earlier is the son of deceased Mahadev and he survived perhaps because he was not present in the house when it was attacked, and the said witness clamed to have seen the incident in front of his house and thereafter some of the members of the assembly taking his family members inside the house and setting them on fire, while he returned from another village where he had gone to report about the earlier incident regarding the quarrel between his father and Accused No.38. Similarly P.W.4 Manohar Hake who is also accepted as one of the eye witness admitted in his cross examination that he had not stated to the police the names of Basappa Basargi accused no.6 (present applicant) and Prabhavati Basargi when his statement was recorded on 22nd March 2004. We have thus noticed that the statement of P.W.3 regarding the presence of the present applicant as a member of unlawful assembly has not been supported by the other 2 eye witnesses and the version of P.W.18 was based on information of the incident given by P.W.17, after the incident had taken place. Primafacie the law laid down by the Apex Court in the case of Masakti (supra) does not support the case of the prosecution regarding the involvement of the

present applicant in the heinous crime that had taken place on 21st March 2004 in which 5 members of the Chavan family were brutally killed and therefore the applicant has made out a case for his release on bail by suspending the order of sentence.

4. The Application is therefore, allowed and it is directed that the Applicant/Accused No.6 be released on bail on his furnishing bond in the sum of Rs.30,000/- and 2 solvent sureties in the like amount.

5. The Applicant is further directed to report to the concerned Police Station i.e. Police Station at Umdi, Tal: Jath, Dist: Sangli on every Sunday between 5 to 7 p.m. during the pendency of the Appeal.

(ROSHAN DALVI, J.) (B.H.MARLAPALLE, J.)